

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CORPORAL TRINIDAD NAVARRO,	:	
	:	
Plaintiff,	:	C.A. No. 05-565 GMS
	:	
v.	:	JURY TRIAL DEMANDED
	:	
CHRISTOPHER A. COONS,	:	
individually and in his official capacity;	:	
GUY H. SAPP, individually and in his	:	
official capacity; and NEW CASTLE	:	
COUNTY, a municipal corporation,	:	
	:	
Defendants.	:	

RESPONSE TO MOTION TO STRIKE APPEARANCES

Defendants respectfully request this Court deny Plaintiff's motion to strike the appearance of Megan Sanfrancesco and Judith Hildick to assist Jeffrey Goddess in the representation of Christopher Coons and Guy Sapp, and in support thereof states as follows:

1. Plaintiff's motion appears to be a transparent attempt by plaintiff to interfere with Defendants' legal representation in an effort to gain some tactical advantage and/or interfere or delay the trial and mediation. Defendants are entitled to due process and representation by counsel of their choosing.
2. Plaintiff's citation to New Castle County Code Section 26.01.018(A)(1) is inapplicable to this case as it is a misdemeanor criminal code provision that would require criminal due process and be subject to a proof beyond a reasonable doubt standard. Therefore, it is inapplicable to this civil case and any civil verdict would not be controlling. Moreover, this is speculation on Plaintiff's part and not a basis to deny counsel to Defendants as provided in other sections of the County Code.

3. The controlling provision with regard to provision of legal services is New Castle County Code Section 2.03.201 which provides in pertinent part “The County Attorney or his designee **shall** undertake the represent or defense without charge of any County officer or employee in a legal proceeding, a civil or criminal investigation or a civil action, arising out of or related to the performance by such officer or employee of his or her public duties . . .” (emphasis added). The code also provides that a determination must be made by the County Attorney that the defendants satisfy certain qualifying criteria for representation, which has been done by the County Attorney in this case.
4. Plaintiff’s argument that there exists a conflict that prevents representation by County Attorneys, whether employed or appointed, is another red herring. Government Attorneys, whether they are a U.S. Attorney, Attorney General, or County Attorney routinely must address possible, potential, or actual conflicts in civil matters. It is routine for government attorneys in civil cases to have one attorney representing a board or agency, and another from the same department appearing before the board or agency. Concerns regarding conflicts may be handled in many ways, sometimes by walls of silence, but also by prophylactic appointment of multiple counsel that could be inside or outside counsel. Plaintiff’s reliance on the possibility of Your Honor’s ruling granting judgment for the County being overturned on appeal is misplaced. First, it is extremely unlikely considering the basis was Plaintiff’s failure to plead the claim. Second, in the unlikely event that the case is remanded for trial against the County, it could appoint other counsel to represent the County if a conflict actually existed. Finally, the parties have been acting pursuant to a joint defense agreement so there has been considerable

sharing of information. It will deprive Defendants of their choice of counsel and their pre-trial preparation to grant Plaintiff's self serving and baseless motion.

Respectfully submitted,

/s/ Judith A. Hildick

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